

EXHIBIT A

EXHIBIT A

2:09-cv-2091-JCM-PAL - October 30, 2012

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
THE HON. JAMES C. MAHAN, U.S. DISTRICT JUDGE, PRESIDING

KATHRYN A. NIEMEYER, et al.,)
)
Plaintiffs,) Case No.
) 2:09-cv-2091-JCM-PAL
vs.)
)
FORD MOTOR COMPANY,) DAY 2
) P.M. SESSION
Defendant.)
)
O R I G I N A L

REPORTER'S TRANSCRIPT OF JURY TRIAL
Tuesday, October 30, 2012

APPEARANCES: (See page 2)

Court Reporter: Felicia Rene Zabin, FCRR, RPR, CCR 478

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I N D E X

WITNESS:	Direct	Cross	Redirect
Plaintiffs:			
Mary Case	320	328	375
Frank G. Pape	381	393	402
Karen Michelle Port	407	424	
Ann Heese	430	438	443

EXHIBITS

EXHIBIT NO.:	MARKED/OFFERED	RECEIVED
Plaintiffs:		
211	381	381

FELICIA R. ZABIN, FCRR, RPR, CCR 478 (702) 676-1087

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LAS VEGAS, NEVADA, TUESDAY, OCTOBER 30, 2012, 2:13 P.M.

--ooo--

P R O C E E D I N G S

(Mary Case, M.D., resumes the witness stand.)

(Jury enters the courtroom at 2:21 p.m.)

THE CLERK: All rise.

THE COURT: All right. Thank you. You may be seated.

Will the parties stipulate to the presence of the jury?

MR. KUHLMAN: Yes, your Honor.

MR. RODMAN: Yes, your Honor.

THE COURT: All right.

Dr. Case, I remind you you're still under oath.

And you may resume your examination.

MR. KUHLMAN: Thank you, your Honor.

DIRECT EXAMINATION (Continued)

BY MR. KUHLMAN:

Q. Dr. Case, before lunch I think I had asked you a question on have you published peer review journal articles that discuss subdural hemorrhage and subarachnoid as markers for diffuse axonal injury?

A. I have.

Q. Okay. And about how many do you think?

A. Three or four.

Q. Okay. And is the reference or the initials for diffuse

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1 ventricles dying of cardiac arrhythmias.

2 A. Oh, sure.

3 Q. Okay.

4 A. We have a lot of people that have enlarged ventricles --
5 that's what hypertension is -- and they have very thick hearts
6 and they die. It's a dangerous disease. Mr. Niemeyer was not
7 in that category.

8 Q. He was getting close to it, but he wasn't right there yet --

9 A. He was --

10 Q. -- true?

11 A. -- getting close, but he was --

12 Q. Right.

13 A. -- not there.

14 Q. And, just so we're clear, didn't see any evidence of skull
15 fractures when you palpated his head?

16 A. No.

17 Q. All right. Didn't see any evidence of jaw or facial bone
18 fractures when you palpated his head; correct?

19 A. Correct.

20 Q. And you did a microscopic examination of was his brain and
21 you made some slides. True?

22 A. That is true.

23 Q. And, from your review of those slides, his brain was
24 unremarkable, meaning it was normal. True?

25 A. It is normal. And, as I indicated, because he was dead so

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1 Q. And, beyond that, none of those six findings would be
2 sufficient to render him immediately pulseless. True?

3 A. None of those things would render him pulseless.

4 Q. Okay. And, in your post-mortem examination that I presume
5 you have a copy of up there, you never mention the words
6 "diffuse axonal injury" in it, do you?

7 A. No. The only time I mention that is if I do the microscopic
8 and I can demonstrate that microscopically then that is a
9 finding. Under where it says "pathology findings," that is what
10 I have listed one, two, three, four, five, six. If I had been
11 able to microscopically see the diffuse axonal injury, which
12 sometimes I can, and then I put that on there as a finding.
13 It's not a finding if you don't find it.

14 Q. Right.

15 A. I can tell you that it's my opinion that it's there because
16 of these other things that have the same mechanism. But it's
17 not a finding.

18 Q. So simply put, Dr. Case, you don't list what you can't
19 demonstrate and you couldn't demonstrate the diffuse axonal
20 injury. True?

21 A. I think I've said that. That is correct.

22 Q. Now, you -- you told us about some of the subdural and
23 subarachnoid blood that -- that you saw when you did your
24 autopsy. Do you recall that testimony?

25 A. Yes, I do.

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1 shortly after the injury, we would not expect to see anything.
2 There is no way to see any kind of change that would occur in
3 that length of time.

4 Q. So what you had to look at, what you saw showed normal,
5 True?

6 A. His brain was perfectly normal.

7 Q. So there were no injuries that you could see on the slides?

8 A. That is correct.

9 Q. Now, in your post-mortem examination, you list out six
10 pathological findings; correct?

11 A. That sounds about right. Under the closed-head trauma,
12 there are six findings. Correct.

13 Q. Right.

14 We got contusions to the forehead, abrasion to the
15 cheek, laceration to the jaw, subgaleal hemorrhage, subarachnoid
16 hemorrhage, and subdural hemorrhage; correct?

17 A. Yes, those are the findings. Those are the things that I
18 saw at autopsy.

19 Q. And none of those six issues would be sufficient to render
20 Mr. Niemeyer unconscious; correct?

21 A. If you look individually at those things, those items would
22 not cause him to be unconscious. It is what you look at and you
23 put that: What does that mean? What is the mechanism that has
24 created those injuries? And that's what tells you what he has
25 is diffuse axonal injury.

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1 Q. And is it your opinion that is the result of some torn
2 bridging veins?

3 A. Yes.

4 Q. Can you tell us how many bridging veins were torn, Dr. Case?

5 A. No. There would be no way to tell that.

6 Q. Are torn bridging veins fatal injuries by themselves?

7 A. No, they are not. That just tells you that the brain has
8 moved in a way that is damaging to those bridging veins and
9 damaging to the axonal processes.

10 Q. You can tear bridging veins in a -- in a minor fall or head
11 impact, can you not?

12 A. Not usually, no.

13 Q. Could you --

14 A. You have to get a lot of motion of your head to create
15 movement of the brain. It's not something -- I couldn't sit
16 here and shake my head and cause that to happen, which is very
17 fortunate. You can't do it, for example -- you can actually
18 measure these things in experimental animals. And so we can
19 gauge the kind of forces. And so we're talking about a lot of
20 force.

21 Q. You can have torn bridging veins, Dr. Case, without having a
22 severe diffuse axonal injury. True?

23 A. Yes. I could open up the head and I could -- I could stick
24 a knife into -- into the cranial cavity and I can cut a bridging
25 vein and without doing any damage to the brain. So it depends

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THE CLERK: All rise.

(Judge Mahan leaves the bench.)

(Jury leaves the courtroom.)

(Proceedings adjourned at 4:55 p.m.)

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I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter.

DATED: October 30, 2012 /s/ Felicia Rene Zabin
FELICIA RENE ZABIN, RPR, CCR NO. 478

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
THE HONORABLE JAMES C. MAHAN, DISTRICT JUDGE PRESIDING

KATHRYN A. NIEMEYER, et al.,
Plaintiffs,
vs.
FORD MOTOR COMPANY,
Defendant,

ORIGINAL

CASE NO.:
2:09-cv-2091-JCM-PAL

REPORTER'S TRANSCRIPT OF JURY TRIAL DAY FOUR, A.M. SESSION
Friday, November 1, 2012

APPEARANCES:
See Page 2

HEATHER K. NEWMAN, CCR 774
Official Federal Reporter

Thursday, November 1, 2012 - 2:09-cv-2091-JCM-PAL

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I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
Robert Caldwell		669	738	
Mariusz Ziewjewski	753			

E X H I B I T S

EXHIBIT NO:	OFFERED IN EVIDENCE	RECEIVED IN EVIDENCE
7-5	721	721
12	680	680
17 - 20	727	727
501-13	733	733
586-192	708	708
821 - 823	711	712
824	737	737

HEATHER K. NEWMAN, FOCR, RPR, CCR 774 (702) 464-5828

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LAS VEGAS, NEVADA; THURSDAY, NOVEMBER 1, 2012; AT 9:03 A.M.

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P R O C E E D I N G S

(Jury returned to courtroom at 9:03 a.m.)

THE CLERK: All rise.

THE COURT: All right. Thank you. You may be seated.

Do the parties stipulate to the presence of the jury?

MR. RODMAN: Yes, Your Honor.

THE COURT: Plaintiffs stipulate to the presence of the jury?

MR. KUHLMAN: Yes, Your Honor.

THE COURT: All right.

Call your next witness.

MR. RODMAN: I believe Mr. Caldwell is on -- going to start cross-examination, Your Honor.

THE COURT: Oh, I'm sorry, you're exactly right.

Mr. Caldwell, come forward and be -- you don't need to be sworn, I remind you that you're still under oath.

Do you understand?

THE WITNESS: Yes, Your Honor.

THE COURT: Thank you.

MR. RODMAN: May I proceed?

THE COURT: Whenever you're ready, sir. Yes, sir.

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1 THE COURT: Yes, sir. Come around over here
2 (indicating).

3 MR. RODMAN: Thank you.

4 BY MR. KUHLMAN:

5 Q. Okay, Dr. Ziejewski, now, from here, can you explain to
6 the jury what you believe the biomechanics and occupant
7 kinematics were of Mr. Niemeyer during the crash sequence with
8 the tree.

9 A. Well, first of all, let's understand the general direction
10 of force. This is a frontal impact, so obviously body's moving
11 forward.

12 Now, if you have seatbelts worn the way how we wear
13 it and if the seat -- if your body position essentially is
14 center in the seat and the seatbelt lock in, your head will not
15 get to the steering wheel. There will be no contact between
16 the head and the steering wheel.

17 Obviously those seatbelts are not the seatbelts like
18 we have in military, in the planes, in ejection seats, or race
19 car drivers. They are not five-point harnesses. So one thing
20 that can happen is -- can we rotate the buck to move a bit?

21 MR. KUHLMAN: Which way?

22 THE WITNESS: Counterclockwise.

23 I hope you are going to see through the window.

24 (Exhibit was rotated.)

25 Okay. That's fine.

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1 show that I need approximately not quite a foot, but about 10
2 inches of slack or 10 inches of additional length of the
3 shoulder belt -- if you lean forward slowly -- for him -- and
4 just move your head towards -- can you touch the steering
5 wheel -- no, move further toward -- somewhere around there, you
6 need several -- yeah, that's fine -- you need several inches of
7 additional length -- yeah, you can go back -- additional length
8 of the shoulder belt for it to occur. If you assume the
9 seatbelt worked properly, and there's no indication it did not,
10 there will not be additional 10 inches of the -- of the belt.

11 So what remains is the other possibility that his
12 body is leaning to the right -- well, go to the right and
13 forward -- so the belt is off -- no, even -- off his shoulder,
14 and I cannot tell you whether or not the shoulder belt is on
15 the elbow or in the mid-biceps, cannot tell you, but it slips
16 off the shoulder and at that time -- if you lean forward -- try
17 to see if you can touch the steering wheel, come close -- you
18 could -- you could force the body to come into contact with the
19 steering wheel.

20 Okay. All right.

21 So I concluded that, assuming there's no evidence of
22 extra length of the belt and the belt worked properly, he was
23 not seated -- seated straight at the time of the collision.
24 Something caused him to move to the side and the shoulder belt
25 was off the shoulder at that time the contact was with the

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1 The body can slip out to the right-hand side so, if
2 I'm holding -- if I hold the belt locked so I would not allow
3 an extra length of the belt -- if I ask our helper to move
4 towards the center sideways and show me whether or not -- well,
5 he's -- okay, hold on, this side, just show me if your upper
6 body can slip out from the shoulder belt. Can you move
7 completely to the right? Completely right. Here we go. .

8 (Surrogate demonstrating.)

9 So obviously the reason that this can happen, because
10 you have a shoulder harness on this -- shoulder belt on left
11 shoulder and not on the right shoulder. So, you can slip out
12 or upper body can slip out to the right.

13 So if for some reason you move towards the center of
14 the vehicle before the event, the shoulder belt -- okay. Go
15 ahead, move again (demonstrating) -- will slip off the
16 shoulder.

17 Now, the belt will be locked. The body is moving
18 forward to the side. The surrogate is not moving forward
19 because I don't have the strength to keep the belt, he's a big
20 guy, but if the belt locks in, you move forward and you have
21 only left shoulder kept, the body will have a tendency to
22 rotate.

23 So, what I concluded, that if he's sitting central --
24 and I will lock the belt -- no way his head can come in contact
25 with steering wheel. Actually I did some surrogate work and I

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1 steering wheel could occur.

2 So we are done with the Part A, the first -- the
3 first body motion before head strike with anything inside the
4 vehicle.

5 BY MR. KUHLMAN:

6 Q. And where do you believe his first head strike occurred
7 within the vehicle?

8 A. Now the Area B, that is the interaction between the head
9 and the interior of the vehicle, and I am aware that you have
10 familiarity with the type of injuries and bruising and
11 lacerations that have been recorded in medical documents. We
12 have impact to the front temporal area and then we -- on the
13 right-hand side. Then we have an impact on the left-hand side,
14 and we have some abrasion-type injury around cheek area and
15 then -- or upper cheekbone area and then we have some
16 additional laceration in the cheek. And also we know that the
17 windshield lever was broken.

18 So now we try to explain what happened. So, here is
19 the body kinematics that is the most likely body kinematics in
20 this case.

21 Lean a little bit to the right.

22 (Surrogate complies.)

23 THE WITNESS: You are off -- the shoulder belt is off
24 the shoulder. We are moving forward and your -- your front
25 right-hand side of the head comes into contact with the

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1 * * *
2 I hereby certify that pursuant to Section 753, Title 28,
3 United States Code, the foregoing is a true and correct
4 transcript of the stenographically reported proceedings held in
5 the above-entitled matter.

6
7 DATED: 11-1-2012 /s/ Heather K. Newman
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9 HEATHER K. NEWMAN
10 U.S. Court Reporter
11 CCR 774
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HEATHER K. NEWMAN, FOCR, RPR, CCR 774 (702) 464-5828

2:09-cv-2091-JCM-PAL - November 1, 2012

<p style="text-align: right;">Page 784</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT DISTRICT OF NEVADA THE HON. JAMES C. MAHAN, U.S. DISTRICT JUDGE, PRESIDING</p> <p>KATHRYN A. NIEMEYER, et al.,)) Plaintiffs,) Case No.) 2:09-cv-2091-JCM-PAL vs.)) FORD MOTOR COMPANY,) DAY 4) P.M. SESSION Defendant.))</p> <p style="text-align: center;">O R I G I N A L</p> <p style="text-align: center;">REPORTER'S TRANSCRIPT OF JURY TRIAL Thursday, November 1, 2012</p> <p>APPEARANCES: (See page 2)</p> <p>Court Reporter: Felicia Rene Zabin, FCRR, RPR, CCR 478</p>	<p style="text-align: right;">Page 786</p> <p style="text-align: center;">I N D E X</p> <p>1 WITNESS: Direct Cross 2 3 Plaintiffs': 4 Mariusz Ziejewski 791 797 Christopher Caruso 822 860 5 6 7 EXHIBITS 8 EXHIBIT NO.: MARKED/OFFERED RECEIVED 9 Plaintiffs': 10 87 796 796 90 798 798 11 245 821 821 304A, 304B, 304C, and 304D 822 822 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 785</p> <p>1 APPEARANCES: 2 For the Plaintiffs: 3 BRADLEY D. KUHLMAN, ESQ. CHAD LUCAS, ESQ. Kuhlman & Lucas, LLC 1100 Main Street, Suite 2550 5 Kansas City, Missouri 64105 (816) 799-0330 6 7 DANIEL T. RYAN, ESQ. Law Offices of Daniel T. Ryan, LLC 10525 Big Bend Boulevard 8 St. Louis, Missouri 63122 (314) 222-7717 9 10 For the Defendant: 11 DANIEL S. RODMAN, ESQ. Snell & Wilmer 12 600 Anton Boulevard, Suite 1400 Costa Mesa, California 92626 13 (714) 427-7000 14 JAY JOSEPH SCHUTTERT, ESQ. JOSHUA COOLS, ESQ. 15 Snell & Wilmer, LLP 3883 Howard Hughes Parkway, Suite 1100 16 Las Vegas, Nevada 89169 (702) 784-5200 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 787</p> <p>1 LAS VEGAS, NEVADA; THURSDAY, NOVEMBER 1, 2012; 1:31 P.M. 2 --oOo-- 3 P R O C E E D I N G S 4 THE CLERK: All rise. 5 THE COURT: Thank you. You may be seated. 6 All right. I've reviewed the materials that you -- 7 both sides submitted. 8 How much longer are you gonna -- did you intend to be 9 with this witness? 10 MR. KUHLMAN: Only about 15 minutes at most. 11 THE COURT: All right. 12 And then you're finished with him? 13 MR. KUHLMAN: Correct. 14 THE COURT: All right. 15 It's -- he reminds me a little bit of the lion from The 16 Merchant Venice, Shakespeare's play. The devil can cite 17 scripture for his purposes, which means you can find anything in 18 scripture to support any position you want to take. And so I -- 19 I think it's a little bit the same thing here. I think it's 20 more a matter of credibility and cross-examination. 21 Let me just refer you to the February 15, 2012, 22 deposition. It says, "Ford submittal, first depo." I think 23 this is from the defendant's side. Page 116: 24 "Q. ... And, so, um, do you have an opinion was it -- 25 was it more likely that Mr. Niemeyer had -- was leaning out of</p>

1 (Pages 784 to 787)

FELICIA R. ZABIN, FCRR, RPR, CCR 478 (702) 676-1087

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<p>1 and he was not involved in the creation of this calibration 2 report. So that testimony is improper and lacks foundation. 3 THE COURT: He doesn't need to work at Ford in order to 4 comment on the testing. 5 MR. SCHUTTERT: Well, to comment that this is not 6 meeting up to Ford's expectations he doesn't have the foundation 7 for that. 8 THE COURT: Well, as I understand his testimony, it's 9 14.68 and he has a right to look at it. 10 MR. KUHLMAN: Mr. Krishnaswami. 11 THE COURT: Why do you say at 90 percent of it's not -- 12 it doesn't meet the -- it doesn't immediate Ford's criteria? 13 THE WITNESS: Because it doesn't deploy. And -- and 14 Ford establishes a threshold, but they have to have margin. 15 The -- we talked about the margin earlier. You can't put a 16 system in the field -- again, this is a perfect laboratory crash 17 test. They know, I knew developing these systems it is not 18 gonna work like that in the real world. 19 You've got to have margin. You can't guarantee a 20 14.68-mile-per-hour all-fire threshold in a pole if you don't 21 have margin. If they ran the same exact laboratory test again, 22 they have a probability of failure. And that's where this 23 system is defective by design. It is not robust. 24 BY MR. KUHLMAN: 25 Q. Okay. And this is --</p>	<p>1 was a design defect or a manufacturing defect. I asked him that 2 very question and he said he couldn't tell me. And now we're 3 hearing something completely new. 4 THE COURT: All right. It's credibility in 5 cross-examination. 6 BY MR. KUHLMAN: 7 Q. Mr. Caruso, the other test at 22.7 -- can you clear that off 8 a little bit? 9 A. I can try. There we go. 10 Q. (Highlight.) Have I highlighted that test (pointing) 11 Mr. Caruso, on the Exhibit 245? 12 A. Yes, you have. 13 Q. And is that the -- what speed is that test run at? 14 A. This one, again, they -- we did this too. I mean, we -- we 15 call it a 23-mile-per-hour test, but their actual test is run at 16 22.7 miles per hour. We always -- we'd do the same. We called 17 it a 20-mile-per-hour pole, but it might have been run at 19.8. 18 But this is a 22.7-mile-per-hour centerline pole as opposed to 19 an offset pole. And, by the way, that low-speed pole was a 20 Centre Pole as well. 21 So this is a centerline pole (drawing) -- I'm not sure 22 how these arrows are coming up. I'm sorry -- about, again, it's 23 a centerline pole at 22.7 miles per hour. And, again, we know 24 it's above the 14.68-mile-per-hour threshold. We expect a 25 deployment.</p>
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<p>1 THE COURT: So I'll overrule it and I'll allow him to 2 testify. 3 Go ahead. 4 BY MR. KUHLMAN: 5 Q. Do you have an opinion on whether or not there's a defective 6 design in this airbag system? 7 A. I -- I do. Again, there's two possible defects. And -- and 8 I can never rule out what I call a malfunction or a component 9 failure. 10 But, in a 2007 vehicle, that's so unlikely. The 11 systems are so well designed, diagnostics are so robust that the 12 probability of -- of Mr. Niemeyer driving down the road and 13 having a component, a sensor fail, is unlikely. Can't rule it 14 out. 15 But my experience tells me it's not likely the cause 16 which means that the system failed to deploy the airbag because 17 of something else and that's where I believe I -- I -- I -- I 18 think I've identified this as a design defect. It was already 19 flawed when they released the calibration like this into the 20 real world. 21 Q. Okay. And so is it your opinion that there's a design 22 defect in the airbag system? 23 A. Yes, there is. 24 MR. SCHUTTERT: Objection, your Honor. At his 25 deposition he plainly testified he couldn't identify whether it</p>	<p>1 Q. Okay. And so at that 22.7-mile-an-hour test, did they get 2 deployments? 3 A. Yes. If you look again at the .9, scaling the signal down 4 by 10 percent, the original signal as received at a 100 percent 5 and then scaling the signal up by 10 percent, (drawing) you can 6 see that we get trigger times between 12.98 here (drawing) and 7 as high as 14.23 (drawing) here. But, again, those are very 8 good trigger times. Well within the reasonable range of the 9 deployment of an airbag for a -- for a high-speed pole. 10 Q. Okay. And why is robustness and performance important in 11 airbag systems? 12 A. I kind of alluded to it already, but this is so important 13 for the jury to understand. 14 In the real word, meaning what happens out there, is 15 not gonna represent what happens in a laboratory. If I don't 16 release a system that by computer modeling and by perfect 17 laboratory environmental conditions is -- is not robust, if I 18 release a calibration or a system that is not robust here, what 19 happens out there is gonna be much worse. 20 You just don't have control of the real world. The 21 pole is gonna be a different size. The -- the vehicle may have 22 gone through 5 years or 10 years of aging by the time it hits 23 that -- that pole. You know, there's so many factors here that 24 lead to variation expected, expected real-world variation and 25 performance, that when it leaves my shop, when it leaves my</p>

18 (Pages 852 to 855)

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1 design studio, it has to be as perfect as I can get it. And, if
 2 it's not, I have to take a step back and figure out why and, if
 3 possible, fix it.
 4 Q. Did you look, also, at the airbag stage 2 test results?
 5 A. Yes, I did.
 6 Q. Okay. And did you look at those as they relate to pole
 7 performance for the 2007 Focus?
 8 A. I did. I looked specifically at these -- these three tests,
 9 the only three tests that Ford ran.
 10 Q. Okay. Were -- did you have any concerns about the
 11 robustness in those tests?
 12 A. I did. Again, it doesn't affect directly our Niemeyer case,
 13 but it has a direct indication of the same problem that exists
 14 even in stage 2.
 15 (Exhibit 245, BUZ 37410, displayed in open
 16 court.)
 17 BY MR. KUHLMAN:
 18 Q. Is that what's on the screen, which is BUZ 37410, reflect
 19 stage 2?
 20 A. Yes. Right up here (drawing) you can see AB2 belted.
 21 That's airbag stage 2 for a belted occupant. And, again, I'm
 22 looking at this because, you know, again, our occupant is belted
 23 in this case. So -- so this is the most important area for us
 24 to look at.
 25 Q. Okay. And have I highlight the 22.7-mile-an-hour threshold

1 We're looking again (drawing) at the 100 percent now, which is
 2 the crash as run -- this is the -- it hit the barrier and that's
 3 the data. It is what it is. We see that we might get an
 4 (drawing) airbag deployment of -- again, stage 2, stage 2
 5 belted -- we might get an airbag deployment at 47.23
 6 milliseconds. Okay?
 7 So this crash is severe enough that we might get a
 8 second stage. We're supposed to now by their requirements. But
 9 what happens when you look at all of the variation, the --
 10 lookin' at just -- just sampling the crash a little differently.
 11 The "113.7" means we didn't deploy. So we disposed of
 12 it. We -- we -- we -- after a hundred milliseconds, we went
 13 ahead and discarded that second stage even though it's not gonna
 14 have any bearing on occupant protection.
 15 Looking at .9 (drawing), the 90 percent, where you
 16 scale the crash down a little bit, all you see is disposal.
 17 There's no deployment at all.
 18 So stage 1 deploys. And I think we showed those
 19 numbers on the previous page, like 5 or 20 milliseconds. And
 20 then a hundred milliseconds after stage 1 deploys we discharge
 21 by disposing of and deploying stage 2. We just get rid of it so
 22 no one can be injured or hurt by it later.
 23 Q. So was the design robust enough for stage 2 at the
 24 must-deploy threshold?
 25 A. It is not because effectively that is their stage 2 all-fire

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1 test for stage 2?
 2 A. You have. As before, it's Crash Test 13566 which is, you
 3 know, (drawing) in simple numbers a 23-mile-per-hour centerline
 4 pole. We know it was actually a 22.7-mile-per-hour centerline
 5 pole.
 6 Q. Okay. Can you explain to the jury what your concern is?
 7 A. Yes. This is very important. We have dual-stage airbags;
 8 right? Stage 1, stage 2. These inflators can be harmful and --
 9 and in some cases, you know, can cause injury.
 10 So, if we fire the first stage of an airbag system,
 11 even if the second stage is not required, about a hundred
 12 milliseconds after the first stage is done we're gonna fire the
 13 second stage anyway. We don't want the second stage to go off
 14 while the EMT's are clipping wires and extracting people out of
 15 the vehicle.
 16 So we do what we call "disposal." We -- we -- we fire
 17 the second stage anyway when it's gonna be of no consequence to
 18 the occupant but we get rid of it so that it doesn't cause any
 19 harm to some- -- somebody who would come upon this inflator
 20 later. In particular, I mentioned the EMT's, the emergency
 21 technicians who are using the Jaws of Life and things like that
 22 to cut people out of a vehicle. We don't want them injured by a
 23 sudden -- you know, a deployment of a -- of a -- of an airbag
 24 inflator.
 25 And so what we -- what you see here is very important.

1 threshold. It does not deploy under all conditions.
 2 Now, again, this is not a direct bearing on our crash.
 3 But it shows that they are having pole impact problems with this
 4 calibration before it ever left the factory, before it ever left
 5 the design studio. They are already in trouble. They can't
 6 meet the pole impact requirements.
 7 Q. Okay. In the Niemeyer crash, do you believe stage 1 should
 8 have deployed?
 9 A. It should have.
 10 Q. And the fact that it didn't deploy, is that a defect in the
 11 system?
 12 A. Yes. The nondeployment of the stage 1 airbag in the
 13 Niemeyer crash is unreasonably dangerous and defective.
 14 Q. Okay. And, if the -- if the system was not defective, would
 15 the airbag have deployed in that crash?
 16 A. If it had been designed correctly and operated correctly,
 17 the airbag would have deployed and he would have been protected
 18 from this head injury.
 19 Q. Okay. Thank you, Mr. Caruso.
 20 MR. KUHLMAN: No further questions.
 21 THE COURT: All right.
 22 Cross-examination.
 23 MR. SCHUTTERT: Thank you, your Honor.
 24 (Pause in the proceedings.)
 25 ///

19 (Pages 856 to 859)

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<p style="text-align: right;">Page 876</p> <p>1 A. It does make sense. Yes.</p> <p>2 Q. All right. So you'd agree, sir, that there are gonna be</p> <p>3 some frontal crashes where the system's designed to deploy just</p> <p>4 to the pretensioner but not the airbag; correct?</p> <p>5 A. That is correct.</p> <p>6 Q. Now, as part of your work in the case, sir, you don't have</p> <p>7 any opinion what caused Mr. Niemeyer to lose control; cross the</p> <p>8 center median; cross the two opposite lanes; jump the opposite</p> <p>9 curb; and then impact the tree; correct?</p> <p>10 A. I do not. No opinion.</p> <p>11 Q. But you're aware from the work you've done in the case and</p> <p>12 the things you reviewed that witnesses reported him slumping</p> <p>13 over prior to losing control; correct?</p> <p>14 A. I have read that.</p> <p>15 Q. And, as part of your investigation, you're not aware of any</p> <p>16 evidence of braking on the part of Mr. Niemeyer from the point</p> <p>17 where he lost control of the vehicle up until the impact with</p> <p>18 the tree; correct?</p> <p>19 A. I am not, but I also have not studied that not as part of</p> <p>20 this -- as part of my investigation.</p> <p>21 Q. And, similarly, you're not aware of any evidence of -- of</p> <p>22 steering from the initial loss of control to the point of impact</p> <p>23 with the tree; correct?</p> <p>24 A. I am not, but I have also not studied that.</p> <p>25 Q. Okay. Now, even though you live just down the road in</p>	<p style="text-align: right;">Page 878</p> <p>1 witness?</p> <p>2 MR. SCHUTTERT: I'd say probably a half-hour.</p> <p>3 THE COURT: All right.</p> <p>4 Why don't we break at this time. It's almost 5:00</p> <p>5 o'clock.</p> <p>6 Is this a good stopping place?</p> <p>7 MR. SCHUTTERT: Yeah, absolutely.</p> <p>8 THE COURT: All right.</p> <p>9 All right. Ladies and gentlemen, during this recess, I</p> <p>10 again admonish you not to discuss the case among yourselves or</p> <p>11 with anyone else; not to listen to, read, or watch any report</p> <p>12 of, or commentary on the trial by any person connected with the</p> <p>13 trial or by any medium of information including, without</p> <p>14 limitation, newspaper, television, radio, or the Internet; and</p> <p>15 you are not to form or express an opinion on any subject</p> <p>16 connected with this case until it is finally submitted to you</p> <p>17 under instructions from me for your deliberations.</p> <p>18 So we'll be in recess until 9:00 a.m.</p> <p>19 THE CLERK: All rise.</p> <p>20 (Judge Mahan leaves the bench.)</p> <p>21 (Jury leaves the courtroom.)</p> <p>22 (Proceedings adjourned at 4:55 p.m.)</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 877</p> <p>1 Henderson, sir, at the time you gave your deposition you told me</p> <p>2 you had not been out to visit the scene of the crash; correct?</p> <p>3 A. Correct. It wasn't really pertinent to my opinions.</p> <p>4 Q. Plus the traffic can be bad from Henderson to Summerlin?</p> <p>5 A. Probably. I don't go to Summerlin very often.</p> <p>6 Q. But, as part of your work in the case, you did actually</p> <p>7 inspect the subject vehicle. True?</p> <p>8 A. I did.</p> <p>9 Q. You went out to San Diego and inspected it at the home of</p> <p>10 the current owner in August of 2010, I think; is that right?</p> <p>11 A. You know, I don't remember the exact date. But that sounds</p> <p>12 about right.</p> <p>13 Q. And you didn't take any notes at your vehicle inspection,</p> <p>14 did you?</p> <p>15 A. No. The -- the vehicle had been repaired and I simply took</p> <p>16 some photographs. And that was it.</p> <p>17 Q. Okay. I mean, you jumped ahead to my next question.</p> <p>18 At the time of your inspection, the vehicle was in its</p> <p>19 immediate post-crash condition. It had been repaired and was</p> <p>20 being driven around in use; correct?</p> <p>21 A. That's correct.</p> <p>22 Q. So there wasn't any physical evidence from the crash</p> <p>23 involving Mr. Niemeyer for you to look at. True?</p> <p>24 A. For me to look at. That's correct.</p> <p>25 THE COURT: How much longer you going to be with this</p>	<p style="text-align: right;">Page 2012</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF NEVADA</p> <p>3 THE HON. KENT J. DAWSON, U.S. DISTRICT JUDGE, PRESIDING</p> <p>4</p> <p>5 KATHRYN A. NIEMEYER, et al.,)</p> <p>6)</p> <p>6 Plaintiffs,) Case No.</p> <p>7) 2:09-cv-2091-JCM-PAL</p> <p>7 vs.)</p> <p>8) DAY 4</p> <p>8 FORD MOTOR COMPANY,) P.M. SESSION</p> <p>9)</p> <p>9 Defendant.) ORIGINAL</p> <p>10)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>14 CERTIFICATE</p> <p>15 I hereby certify that the foregoing matter is transcribed from</p> <p>16 the stenographic notes taken by me and is a true and accurate</p> <p>17 transcription of the same.</p> <p>18</p> <p>18 /s/ Felicia Rene Zabin</p> <p>19 FELICIA RENE ZABIN, CCR No. 478</p> <p>20 OFFICIAL FEDERAL REPORTER</p> <p>21</p> <p>21 Dated: November 2, 2012</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

24 (Pages 876 to 2012)

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 THE HONORABLE JAMES C. MAHAN, DISTRICT JUDGE PRESIDING
4
5 KATHRYN A. NIEMEYER, et al.,
6 Plaintiffs,
7 vs. CASE NO.:
8 FORD MOTOR COMPANY, 2:09-cv-2091-JCM-PAL
9 Defendant, Plaintiffs' Case-in-Chief
10 ORIGINAL

11
12 REPORTER'S PARTIAL TRANSCRIPT OF JURY TRIAL DAY FIVE,
13 A.M. SESSION
14 Friday, November 2, 2012

15
16 APPEARANCES:
17 See Page 2

18
19
20
21
22
23
24
25 HEATHER K. NEWMAN, CCR 774
Official Federal Reporter

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1 INDEX
2 WITNESSES: DIRECT CROSS REDIRECT RECROSS
3 Christopher Caruso 882 920 --
4 Kathryn Niemeyer 925 965 979 --

11 EXHIBITS
12 OFFERED IN RECEIVED
13 EXHIBIT NO: EVIDENCE IN EVIDENCE
14 287R, S, T, U, X & Z 934 935
15 525 968 968
16 528 970 970
17 529 973 973
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1 LAS VEGAS, NEVADA; FRIDAY, NOVEMBER 2, 2012; AT 9:06 A.M.
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PROCEEDINGS

3
4
5 *** EXCERPT OF TRANSCRIPT OF PROCEEDINGS ***
6
7 (Jury returned to courtroom at 9:03 a.m.)
8 THE CLERK: All rise.
9 THE COURT: All right. Thank you. You may be
10 seated.
11 Come forward and have a seat, please, sir.
12 THE WITNESS: Thank you.
13 THE COURT: Yes, sir.
14 I remind you you're still under oath.
15 Do you understand that?
16 THE WITNESS: Yes, I do.
17 THE COURT: All right.
18 You may resume your examination, Mr. Schutkert.
19 MR. SCHUTTERT: Thank you, Your Honor.
20 THE WITNESS: Yes, sir
21

22 FURTHER CROSS-EXAMINATION OF CHRISTOPHER CARUSO
23 BY MR. SCHUTTERT:
24 Q. Welcome back, Mr. Caruso.
25 A. Good morning.

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1 Q. Mr. Caruso, you have not performed any testing as part of
2 your work in this case; correct?
3 A. I have not.

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- 16 Q. And the RCM also controls the pre-tensioners.
 17 True?
 18 A. Yes, it controls all of the electronics in the airbag
 19 system.
 20 Q. So basically these systems work together, they analyze the
 21 crash and then if necessary, the RCM deploys a safety device
 22 based on crash severity to give the occupant the appropriate
 23 level of protection.
 24 True?
 25 A. That is correct.

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- 1 Q. And in general, sir, higher level of crash severity, more
 2 safety features will be deployed.
 3 True?
 4 A. That is correct.
 5 Q. For this particular vehicle, the range of deployable
 6 features is nothing, all the way up to a high output airbag;
 7 correct?
 8 A. That is correct. We called that airbag Stage 2 yesterday.
 9 Q. Right.
 10 And so in some frontal crashes, this system won't
 11 deploy any safety features because the seatbelt can adequately
 12 protect the occupant from hitting the front structures.
 13 Correct?
 14 A. Seatbelt without the pre-tensioner, you mean?
 15 Q. Yes.
 16 A. Yes, and that's what we declared that to be below, in this

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 Case, 7.6 miles per hour.

- 18 Q. And by definition, sir, seatbelt is the primary restraint
 19 in a vehicle; correct?
 20 A. It is supposed to be.
 21 Q. And the pre-tensioner and airbag supplement the seatbelt;
 22 correct?
 23 A. Exactly. SIR, that term represents supplemental
 24 inflatable restraint. It was always meant to be a supplement
 25 to the seatbelt.

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- 1 Q. So, in effect, you save the airbag for the higher severity
 2 crashes where it will provide an injury benefit to an occupant
 3 by keeping them off the front structures; correct?
 4 A. Yes, exactly.
 5 Q. Because if there is a risk of injury from hitting the
 6 front structures, an airbag is really of little or no benefit.
 7 True?
 8 A. Correct. If the seatbelt alone can do the job, the airbag
 9 is not required or necessary.
 10 Q. And yesterday when we were talking, I believe with
 11 Mr. Kuhlman, you referenced the system as a five-threshold
 12 system.
 13 True?
 14 A. Correct.
 15 MR. SCHUTTERT: Your Honor, at this time I'd move to
 16 admit Exhibit 806-7. I don't believe there's any objection
 17 from the other side.
 18 (Defense Exhibit 806-7 was
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- 19 offered into evidence.)
 20 MR. KUHLMAN: No objection, Your Honor.
 21 THE COURT: All right. It will be admitted.
 22 (Defense Exhibit 806-7 was
 23 received into evidence.)
 24 BY MR. SCHUTTERT:
 25 Q. Mr. Caruso, does this look like a severity threshold

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- 1 example?
 2 A. Yes, it does. I had produced one of these but we couldn't
 3 use it because I had not submitted it prior, but I had one
 4 similar to this.
 5 Q. This is something people in the industry are familiar with
 6 what this looks like?
 7 A. Yes, correct.
 8 Q. And this essentially walks us through the pre-tensioner,
 9 which is the lowest deployable future, all the way up to the
 10 high output airbag; correct?
 11 A. Correct, and for the jury's purposes, the low output, we
 12 described -- I described yesterday as stage 1 and high output I
 13 described as stage 2. Given that substitution, they should
 14 recognize what this means.
 15 Q. So, low output and stage 1 are interchangeable terms?
 16 A. Correct.
 17 Q. And stage 2 and high output, interchangeable terms?
 18 A. In my terminology they are interchangeable.
 19 Q. So, if we look at this severity threshold example, we see

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 pre-tensioner as the lowest deployable safety feature?

- 21 A. Yes.
 22 Q. And then above that we see the unbelted low output;
 23 correct?
 24 A. Correct.
 25 Q. And then above that we see the belted low output.

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- 1 True?
 2 A. That is correct.
 3 Q. You get more severe than that, you get into the unbelted
 4 high output; correct?
 5 A. That is correct.
 6 Q. And then the highest deployable safety feature for the
 7 most severe crashes is the belted high output threshold;
 8 correct?
 9 A. That is correct.
 10 Q. And on this graph we see "event duration" on the bottom
 11 and then we see "severity level" on the left-hand side,
 12 suggesting that as severity goes up, the type of safety feature
 13 will be deployed.
 14 True?
 15 A. That is correct.
 16 Q. And as we mentioned earlier, the reason that they're lower
 17 thresholds for unbelted occupants is because we don't have the
 18 benefit of the airbag to keep them off the structures in the
 19 vehicle.
 20 True?
 21 A. That is correct. As a matter of fact, the diagram that I

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16 If you need it to fire all the time, let's say stage
17 1 at 14.7 miles per hour, you need to have at least 10 percent
18 margin because if you don't run -- if you run that same exact
19 test again, it could fail just by nature of vehicle variability
20 and test variability. So that's why I don't -- as we said
21 before, there's a gray band. The system has error in
22 tolerance. They can't possibly be that precise that I can fire
23 at 14.7 but at 14.5, for example, I'm not going to fire.
24 That's impossible.
25 Q. Sir, you were not involved in the design of the sensors in

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1 this vehicle, were you?
2 A. Not in this vehicle, I was not.
3 Q. Sir, you were not involved in the testing of the sensors
4 that Bosch and Ford did for this vehicle, were you?
5 A. No.
6 Q. You weren't involved in the creation of the calibration
7 sign-off document that we've talked about at length; correct?
8 A. I was not.
9 Q. And you haven't spoken to anyone at Ford or Bosch about
10 the calibration of the airbags in this vehicle, were you?
11 A. Only seen depositions of the appropriate people.
12 Q. So you have not spoken to anyone?
13 A. Correct, I have not.
14 Q. And certainly, sir, you are not qualified to come to this
15 court and speak on Ford's behalf, are you?
16 A. I'm qualified to come here and speak on behalf of our

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Client on a defect in this system that is evident by a
18 non-deployment of an airbag where a fatality occurred. I'm not
19 going to declare that I designed or built this system. If I
20 had, there might be things very different in the system.
21 Q. Sir, my question was very simple. You're not here on
22 behalf of Ford to speak of the contents of the calibration
23 document as Ford sees them.

24 True?
25 A. As Ford sees them, correct.

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1 Q. And as you alluded to, the reality is, you're being paid
2 by Mr. Kuhlman to review this document, come to court and give
3 us your impressions of it; correct?
4 A. Not just the document, but in general, yes.
5 Q. The materials, including that document; correct?
6 A. That is correct.
7 Q. And since you don't have any personal knowledge of the
8 testing and all the things that went into that document, you've
9 had to make some assumptions regarding the contents of that
10 document.
11 True?
12 A. Yes, I have.
13 Q. And one of those assumptions you made, sir, was that Ford
14 actually wanted the airbag to deploy at 90 percent of the
15 calibration in a 15 mile an hour pole hit for the belted
16 occupant; correct?
17 A. My assumption was if Ford wanted to deploy all the time,
18 meaning all-fire threshold at 14.7, then at 90 percent they

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19 would want that thing to fire as well.
20 Q. And that's just your --
21 A. It is an assumption, but that is my specific assumption.
22 Q. You are assuming that's what Ford wanted; correct?
23 A. Correct.
24 Q. And sir, if it turns out that Ford didn't want a
25 deployment at 90 percent of that calibration, then your

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1 testimony that the airbag didn't deploy consistently is
2 incorrect, sir, isn't it?
3 A. It would be incorrect but then it would also explain why
4 it fails to deploy at 15 to 16 miles per hour, because they had
5 no margin, no robustness.
6 Q. Sir, to avoid anymore assumptions and speculation, why
7 don't we just wait until the Ford folks get here to explain
8 what they mean by this document.
9 Can we agree on that?
10 A. That's fine.
11 Q. Now, you agree the system was deploying the airbag
12 consistently and robustly in the 14 mile per hour pole hit for
13 the unbelted occupant.
14 True?
15 A. Yes, that is correct.
16 Q. And for the unbelted occupant, sir, the system was
17 deploying the stage 2 bag robustly and consistently in the 23
18 mile an hour pole impact.
19 True?

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A. That was my recollection but I don't have -- I don't have
21 that in front of me.
22 Q. If you want to look at BUZ 37411, would that refresh your
23 recollection?
24 A. I'll trust you. Again, I didn't focus on unbelted, but I
25 do recall those being correct.

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1 Q. And in the 14.7 pole impact and the 22.7 pole impact, the
2 pre-tensioner deploys consistently and robustly.
3 True?
4 A. Yes, it does.
5 Q. And the same components that control the airbag control
6 the pre-tensioner.
7 True?
8 A. That is correct.
9 Q. Sir, although your opinion is that this airbag system's
10 defective in all the Ford vehicle -- Ford Focus vehicles out
11 there with this system, you never told NHTSA that you think
12 these Ford Focus vehicles have a problem, have you?
13 A. I have not been able to identify the root cause. It would
14 be premature for me to go out and say that -- to NHTSA that
15 I've got a smoking gun, that this sensor was damaged in the
16 crash or some other phenomenon. I could not prove it in this
17 case because of the available information.
18 Q. Since you can't prove it, it would be premature to tell
19 NHTSA anything.
20 True?
21 A. I would not be in a position to tell NHTSA anything

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22 without the root cause.
23 Q. And last -- in August of 2010, when you were at the owner
24 of the vehicle's home, inspecting the vehicle, you never told
25 that man his vehicle was defective, did you, sir?

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1 A. I'm not sure if I even met that man but, anyway,
2 nonetheless, I didn't -- I was inspecting the vehicle at the
3 time. I had no idea what I was going to find at that time.
4 Q. Mr. Caruso, you can't show me one specific thing that
5 wasn't working properly with this airbag system on the day of
6 the accident, can you?
7 A. I cannot. I can only show you what is showing up in
8 Ford's documents that we've discussed in my deposition. I
9 can't tell you specifically what went wrong on this day, in
10 this vehicle, in this crash.
11 Q. And you know that this RCM system runs diagnostics so,
12 every time someone gets in this vehicle and turns the key, it
13 checks the airbag system and it illuminates a warning light if
14 there's any problem in the system.
15 True?
16 A. That's correct, and it continues to do those diagnostics
17 even just driving down the road.
18 Q. It's consistently and constantly monitoring the system to
19 let the driver know that there could be a problem; right?
20 A. We call it state of health.
21 Q. State of health.
22 It gives you an orange or red icon on the instrument
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23 panel that shows a little airbag with a driver; correct?
24 A. That -- the icon could change from vehicle to vehicle but,
25 it lights up in what I call the airbag lamp.

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1 Q. Right. We call it the airbag warning lamp.
2 True?
3 A. Correct.
4 Q. And you have no information whatsoever, sir, that that
5 airbag warning lamp was illuminated prior to Mr. Niemeyer's
6 crash.
7 True?
8 A. I do not. I did go back and research documents from Hertz
9 Rent-A-Car to verify that there were no prior accidents, but I
10 have no information that would allow me to tell whether that
11 airbag light was illuminated prior to this crash.
12 Q. You've read the Hertz representative's deposition, haven't
13 you?
14 A. I may have. I don't remember if I read his deposition.
15 Q. Certainly you don't have any specific information from
16 Hertz indicating that the warning light was on.
17 True?
18 A. That is correct, I do not.
19 Q. And have you read the investigating officer,
20 officer Tusko's deposition?
21 A. Yes.
22 Q. And nothing in his deposition suggesting the airbag
23 warning light was on prior to this crash.
24 True?
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25 A. That's my understanding, correct.

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1 Q. So, you've testified for us, and you wrote this down with
2 Mr. Kuhlman, that the threshold is 14.7, yesterday.
3 Do you remember doing that? He was writing things
4 down and you were speaking?
5 A. Yes.
6 Q. And you wrote -- he wrote 14.7 based on your testimony.
7 Sir, yesterday we heard from an accident
8 reconstruction expert named Mr. Caldwell and his range was --
9 for the impact speed was 14.5 to 16 miles per hour.
10 Are you aware of that testimony?
11 A. I thought it was 15 to 16 but, if it's 14.5 to 16, that
12 it -- if Mr. Caldwell says that, I trust his judgment.
13 Q. Well, assume that his low end of the range is 14.5 and
14 just talking straight mathematics, sir, 14.5 is less than 14.7.
15 True?
16 A. Correct.
17 Q. Now, just to summarize and wrap things up, Mr. Caruso, at
18 your deposition last year you could not tell me to a reasonable
19 degree of engineering probability the exact reason why the
20 airbag in the Niemeyer vehicle did not deploy on the date of
21 the accident.
22 Is that a true statement, sir?
23 A. In clarification, I hypothesized several areas that I hold
24 to a high degree of engineering certainty would be one of the
25 causes. I could not verify which one.

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1 Q. Right.
2 You couldn't take your several probabilities and
3 narrow them down to one root cause to a reasonable degree of
4 engineering probability.
5 True?
6 A. Correct, I could not narrow it down to one root cause with
7 reasonable engineering certainty.
8 MR. SCHUTTERT: I have nothing further. Thank you,
9 Your Honor.
10 THE COURT: All right. Anything on redirect?
11 MR. KUHLMAN: Yes, Your Honor.
12
13 REDIRECT EXAMINATION OF CHRISTOPHER CARUSO
14 BY MR. KUHLMAN:
15 Q. Mr. Caruso, you were asked some questions about standard
16 208; correct?
17 A. Yes.
18 Q. Does 208 test pole tests?
19 A. It does not.
20 Q. Does it test tests at the threshold of must deploy levels?
21 A. It does not. That is left to the manufacturer to verify
22 performance near threshold, and in non-frontal barrier-type
23 collisions.
24 Q. Okay. And you were also asked questions about obviously
25 the thresholds in the 2007 Focus; correct?

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22 REDIRECT EXAMINATION OF KATHRYN NIEMEYER
 23 BY MR. RYAN:
 24 Q. Just as a follow up, Kathryn, you nor Tony owned this 2007
 25 Ford Focus; is that right?

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1 A. We did not own the Focus.
 2 Q. Who owned it?
 3 A. Hertz owns it.
 4 THE COURT: Hertz owned it.
 5 MR. RYAN: I understand.
 6 BY MR. RYAN:
 7 Q. Who had control of it?
 8 A. Hertz, I would assume.
 9 Q. Did you believe that you had any control about what would
 10 happen to this vehicle?
 11 A. No.
 12 Q. Do you know anything about how airbags function?
 13 A. No.
 14 Q. Are you a mechanical engineer?
 15 A. No.
 16 Q. Do you have any specific knowledge of what Mr. Jones did
 17 or didn't do?
 18 A. No.
 19 Q. Did you have any understanding whether his investigation
 20 in his mind was complete?
 21 THE COURT: Wait. Let me answer that. Are we
 22 dancing with the stars again, where you lead us all over -- you
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23 lead the witness all over the courtroom?
 24 MR. RYAN: No, Judge, I'm trying to give her some
 25 frame of reference for my question.

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1 THE COURT: Why don't you let her testify. It will
 2 be so much better if you let her testify rather than you
 3 testify and have her say yes or no.
 4 BY MR. RYAN:
 5 Q. Okay.
 6 A. I had the inspection --
 7 THE COURT: Wait. Let him answer -- let him ask you
 8 a proper question.
 9 MR. RYAN: Yeah, let me rephrase the question.
 10 BY MR. RYAN:
 11 Q. Did you have any idea about what Mr. Jones intended to do?
 12 THE COURT: Let me answer that one. Yes. No. What?
 13 You're leading the witness again.
 14 Is that not a leading question? You look at the --
 15 you look quizzically at the ceiling like that's not a leading
 16 question. Let's see, who's testifying? You are. Who's asking
 17 for a yes or no answer? You are.
 18 MR. RYAN: Okay.
 19 THE COURT: That's a leading question.
 20 MR. RYAN: Okay.
 21 BY MR. RYAN:
 22 Q. What was Mr. Jones' intention as to his inspection?
 23 MR. RODMAN: Objection. Calls for speculation.
 24 THE COURT: She has no way of knowing that. That
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25 calls for speculation. She didn't know what his intentions
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1 were.
 2 MR. RYAN: Okay.
 3 THE COURT: What were his intentions about her
 4 instructions? How would she know that? She doesn't.
 5 MR. RYAN: That's the point, your Honor. She doesn't
 6 know. That's why I'm asking her the question.
 7 THE COURT: Wow!
 8 That's not a proper question. It calls for
 9 speculation.
 10 BY MR. RYAN:
 11 Q. Were your intentions to withhold or prevent Ford from
 12 inspecting this vehicle?
 13 THE COURT: Again, it calls for a yes or no answer.
 14 You're testifying, she's not.
 15 BY MR. RYAN:
 16 Q. What were your intentions in regard to the inspection?
 17 A. I was hoping to get some information for myself and my
 18 family about what happened that day with that car. It was not
 19 my intention to withhold anything from Ford. I was doing the
 20 inspection -- I was having the inspection done because I was
 21 asked if I wanted to have the inspection done, and not even
 22 knowing what that means, based on friends' and relatives'
 23 advice, I thought it best that I have it done. I was not
 24 trying to withhold anything from Ford, I was having it done for
 25 my information.

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1 MR. RYAN: No other questions.
 2 THE COURT: All right. Thank you.
 3 Anything on recross?
 4 MR. RODMAN: No, your Honor.
 5 THE COURT: Thank you, ma'am. You may step down.
 6 THE WITNESS: Do I leave this here?
 7 THE COURT: Yes, ma'am, just leave it there.
 8 (Witness excused.)
 9

*** END OF EXCERPT OF TRANSCRIPT OF PROCEEDINGS ***

* * *

14 I hereby certify that pursuant to Section 753, Title 28,
 15 United States Code, the foregoing is a true and correct
 16 transcript of the stenographically reported proceedings held in
 the above-entitled matter.

DATED: 11-2-2012

/s/ Heather K. Newman
 HEATHER K. NEWMAN
 U.S. Court Reporter
 CCR 774

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